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AT

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,755	12/13/2001	Erik Lipson	LPN-10203/03	5227

7590 10/16/2002

Gifford, Krass, Groh, Sprinkle,  
Anderson & Citkowski, P.C.  
280 N. Old Woodward Ave., Ste. 400  
Birmingham, MI 48009

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 10/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/022,755	LIPSON, ERIK
Examiner	Art Unit	
Stephen J. Castellano	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. 
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 	6) <input type="checkbox"/> Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Andreozzi.

Andreozzi discloses a combination drinking container and straw comprising a container, a straw retaining member (40) formed in a wall of the container and a straw (flexible straw 34 and tube 20), a first downwardly extending end of the straw is in fluid communication with a chamber of the container and a second upwardly extending end. The container is closed by a lid and the straw extends through an aperture in the lid to form a hinge.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreozzi in view of Lynd et al. (Lynd).

This rejection is made in the event that the straw can't include portions 34 and 20 and in the event that the lid can't be slid upwardly pass inner end 36 of straw 34.

Andreozzi discloses the invention except for the first end of the straw extending into the container to terminate proximate a closed bottom of the container and a straw which has a loop which extends through an aperture in the lid to form a hinge for the lid. Lynd teaches a straw which is inserted through an aperture in a central portion of the lid so that a first

end of the straw terminates proximate a closed bottom of a container. It would have been obvious to replace tube 20 of the container of Andreozzi with a lengthened portion of flexible straw 34 which is inserted through the aperture in the lid that is moved towards the central portion of the lid by modifying the size of the straw or the size of the aperture such that the aperture will frictionally engage the straw as taught by Lynd in order to improve the assembly of the lid and straw by making the assembly of two pieces instead of three pieces requiring less parts that are required to mate, in order to move the straw connection away from the rim of the container so that the rim doesn't interfere with the straw connection and in order to provide a friction fit between the straw and aperture in the lid to maintain removability and establish a fit which is substantially splash and spill proof.

Applicant's arguments filed August 19, 2002 have been fully considered but they are not persuasive. Applicant's statements are not understood in the last line of the first full paragraph of page 4 of applicant's response which states that the disclosed but not depicted embodiment of Andreozzi's drinking vessel doesn't anticipate any of the claims. First, the examiner uses the disclosed and depicted embodiment not the non-depicted embodiment. Applicant is invited to reread the examiner's anticipatory rejection which has been repeated in this action unchanged. There is no reference to the non-depicted embodiment. Second, it has been clearly indicated that the straw retaining member (40) is formed in the wall of the container in the explanation of the anticipatory rejection.

Later, in the paragraph bridging pages 5 and 6 of applicant's remarks, applicant acknowledges that the straw 34 is retained by the clip (40), and perhaps one could argue that this meets the limitation. This seems to contradict applicant's other remarks made on page 2.

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Applicant begins discussion of the inadequacy of Andreozzi with respect to a hinge in the last paragraph of page 6. The structure of the hinge of Andreozzi includes an aperture in the lid and the portion of the straw (flexible straw 34 and tube 20) which extend through the aperture in the lid. This disclosure is insofar as applicant has disclosed similar hinge structure as represented by applicant's claim language. There is no requirement for Andreozzi to recite a "hinge" per se.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*S. Castellano*  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
October 9, 2002